SUPREME COURT, U. S.

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FILED
OCT 5 1970
E. ROBERT SEAVER, CLE

In the Supreme Court of the United States

October Term, 1970

No. 320

MAURICE H. SCHY,

Petitioner,

vs.

THE SUSQUEHANNA CORPORATION, a Delaware corporation, SAMUEL M. FERGUSON, M. M. HARDIN, H. F. KORHOLZ, J. EARLE MAY, HUGH C. MICHELS, AKSEL NIELSEN, D. W. REEVES, R. C. SCHENK and N. F. TISDALE, JR.,

Respondents.

SUPPLEMENTARY BRIEF OF PETITIONER

MAURICE H. SCHY
9225 Collins Avenue
Surfside, Florida 33154,
Petitioner pro se.

MIAMI REVIEW — 371-4853 — 377-3721

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Petitioner seeks, pursuant to Rule 24-5, to call the attention of the Court to a matter not available on June 26, 1970, when the petition was filed and which petitioner submits relates to the importance of the questions presented by the petition.

On July 20, 1970, the S. E. C. sustained the finding of its examiner, made on August 5, 1969, that Susquehanna had made false and misleading statements in connection with a public tender-offer made on November 26, 1968, to purchase 1,800,000 shares (38%) of the common stock of Pan American Sulphur Company ("Pasco") at $40.00 per share, in having denied its plan to use Pasco's assets, which included $58,000,000. in cash or equivalents, to acquire control of American Smelting and Refining Company ("Asarco"), or to make other major changes in Pasco's corporate structure. The S. E. C. order required Susquehanna to amend certain documents filed by it in 1968.

Susquehanna had financed the illicit tender-offer by making unsecured loans of $71,000,000. from banks (including one of $20,000,000. from the First National Bank of Boston), and an investment company. The notes called for repayment of $15,000,000. within six months and of $56,000,000. within fourteen months. Within six months the market-value of the Pasco shares acquired by the tender-offer had depreciated approximately $10,000,000. and within fourteen months had depreciated approximately $40,000,000. In view of Susquehanna's comparatively miniscule net earnings, such depreciated values have had a profound effect on the fiscal condition of the company.

Undeterred by the S.E.C. proceeding and the adverse decision of its examiner, Susquehanna overcame the strenuous resistance of Pasco and accomplished the take-over of its assets, which are now available to service the wildly speculative loans that made the illicit tender-offer possible.

The petition presents the question *inter alia* of whether, in disqualifying an attorney-stockholder as a class representative, the courts below advance or frustrate the purpose of the securities laws. In weighing the importance of that and other questions presented by the petition the Court should consider several ramifications of the Pasco episode. One is the shocking inadequacy of present facilities for stockholder protection. The sanction imposed by the S.E.C.—that Susquehanna amend the false and misleading documents filed in 1968—is totally ineffective for that purpose. To an aggressive and pragmatic management it is innocuous enough to make violation seem a good risk. In one sense, Susquehanna may have been ill-used. Doting courts, like doting parents, often deprive their charges of the benefits of deserved discipline. Susquehanna might have learned the error of its ways and might never have published its illicit tender-offer had not the court in *Dasho*, a case to which respondents' brief calls the Court's attention, determined that protection of stockholders' interests called for an order forbidding plaintiff from disclosing to enforcement officials the "existence or content" of documents prepared by the Massachusetts Mutual Life Insurance Company and describing in detail the plan of Susquehanna and the First National Bank of Boston to "adjust" Susquehanna's balance sheet for the express purpose of misleading the stockholders and the S.E.C.

The petition should be considered with a view to what its disposition will mean not only to the 9,000 Susquehanna stockholders whose rights were forever terminated without notice by the courts below but to all stock-

holders whose interests need and ought to be protected. The Court should not countenance *Schy* as a precursor to future Pascos.

Petitioner attributes no Promethean proportion to his petition. It does, however represent his conviction that trammeled rights and admitted wrongs, however shrewdly reasoned, ought not to pass for justice within our system. Opposed by wealth and power, such convictions are not asserted in comfort. They are sustained through personal sacrific and not from the corporate coffer. This petition does not come lightly to the Court; it ought not lightly be denied.

Respectfully submitted

MAURICE H. SCHY
Petitioner pro se.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Supplementary Brief has been furnished by mail to the following Counsel of Record this day of October, 1970.

MAURICE H. SCHY
9225 Collins Avenue
Surfside, Florida 33154

RHYNE & RHYNE
400 Hill Building
Washington, D. C. 20006

MELVAN M. JACOBS
ROBERT MANSELL
135 S. LaSalle Street
Chicago, Illinois 60603

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY TO SUPPLEMENTARY BRIEF OF PETITIONER

CHARLES S. RHYNE
COURTS OULAHAN
RHYNE & RHYNE
400 Hill Building
Washington, D. C. 20006

Attorneys for Respondents

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THE SUSQUEHANNA CORPORATION, a Delaware corporation, SAMUEL M. FERGUSON, M. M. HARDIN, H. F. KORHOLZ, J. EARLE MAY, HUGH C. MICHELS, AKSEL NIELSEN, D. W. REEVES, R. C. SCHENK and N. F. TISDALE, JR.,

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Despite the irrelevant and erroneous presentation in Petitioner's "Brief in Reply to Respondents' Brief in Opposition", filed June 26, 1970, Respondents chose not to reply to such a deviation from the practice before this Court.

However, under date of on or about October 1, 1970, received October 6, 1970 by Respondents' counsel, Petitioner has filed with this Court a purported "Supplementary Brief of Petitioner", pursuant to Rule 24(5). The brief refers

to a decision of the Securities and Exchange Commission (SEC) rendered two and one-half months ago.

The brief does not refer to a decision of the Fifth Circuit Court of Appeals which specifically found that there was no violation of the Federal Securities laws by Susquehanna with respect to the tender offer which is described in the brief and the SEC decision. *The Susquehanna Corporation et al. v. Pan American Sulphur Co. et al.*, 423 F. 2d 1075 (March 13, 1970). In that case, a motion for a stay of mandate pending the filing of a petition for a writ of certiorari was denied by Mr. Justice Black on April 24, 1970, and the mandate of the Fifth Circuit Court of Appeals issued April 28, 1970. Both the Fifth Circuit and SEC decisions are irrelevant to any issue before this Court.

Charles S. Rhyne
Courts Oulahan
Rhyne & Rhyne
400 Hill Building
Washington, D. C. 20006
Attorneys for Respondents

October 6, 1970.

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CERTIFICATE OF SERVICE

I, CHARLES S. RHYNE, a member of the Bar of this Court, hereby certify that on this 6th day of October, 1970, three copies of the Reply to Supplementary Brief of Petitioner were airmailed, postage prepaid, to Maurice H. Schy, Esq., 9225 Collins Avenue, Surfside, Florida 33154, Petitioner *pro se.*

CHARLES S. RHYNE
RHYNE & RHYNE
400 Hill Building
Washington, D. C. 20006

Counsel for Respondents